

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F004149

TERRY POTOCKI	CLAIMANT
ST. EDWARD MERCY MEDICAL CENTER	NO. 1 RESPONDENT
SISTERS OF MERCY HEALTH SYSTEM INSURANCE CARRIER	NO. 1 RESPONDENT
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	NO. 2 RESPONDENT

OPINION FILED SEPTEMBER 19, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by R. GUNNER DALAY, Attorney, Fort Smith, Arkansas.

Respondents No. 1 represented by RANDY MURPHY, Attorney, Little Rock, Arkansas.

Respondent No. 2 represented by JUDY RUDD, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on June 21, 2005, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on May 23, 2005. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. Prior opinions are res judicata and the law of the case.
3. The respondents have paid a 23 percent impairment.
4. The claimant sustained a compensable injury to her right ankle.

5. Medical expenses have been paid to date for all injuries.

6. The claimant's healing period ended on December 15, 2004.

7. The claimant is entitled to a weekly compensation rate of \$132.00 for temporary total disability.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's right ankle problems.

2. Additional medical.

3. Additional temporary total disability from June 2, 2004, through December 15, 2004.

4. Attorney's fees to include benefits paid for claimant's right ankle.

The claimant reserves all other issues.

The parties agree that they will, by letter, agree to the date of the end of claimant's healing period.

In regard to the foregoing issues the claimant contends that she is entitled to an impairment rating for her ankle fusion, that she is entitled to additional medical expenses, that a penalty should be assessed a statutory penalty for failure to pay medical benefits awarded in the past, that she is permanently and totally disabled as a result of her injury.

In regard to the foregoing issues the respondents contend that, based on the information currently available, respondents contend that claimant has been paid appropriate benefits. Claimant has provided additional medical records indicating she has received additional treatment. Respondents have requested dates to depose

claimant and, in all likelihood, will depose her treating physicians. Respondents No. 1 further contends that TTD would begin for the claimant in August 2004 at the time of her surgery.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The respondents submitted documentary evidence marked Respondents' Exhibit No. 1. All these exhibits were admitted without objection.

#### DISCUSSION

The claimant testified that she was 74 years old and had previously been employed by the respondent. The claimant testified that she was a certified CNA and provided healthcare services to clients in their home. The claimant testified that on or about April 5, 2000, while working for the respondent at a client's home she fractured her right ankle when she fell through a porch railing. The claimant testified that she was treated by Dr. Lange and then by Dr. Heim. The claimant agreed that she also was treated by Dr. Swicegood for the RSD which she developed as a result of her injury. The claimant testified that her right foot and leg up to her knee go numb due to the poor circulation and that it is red and swells. The claimant testified that she has trouble walking and she has to use a cane. The claimant testified that she last saw Dr. Heim in March 2004 but she has continued to have problems with her right foot and ankle. The claimant testified that after she stopped seeing Dr. Heim she continued to have problems with her right foot and ankle in that it was very painful

and would pop when she would do any amount of walking. The claimant testified that the pain and discomfort has made it difficult for her to sleep. The claimant agreed that in June 2004 she began being treated by Dr. Stephen Kulik and that Dr. Kulik did surgery on her foot on August 3, 2004. The claimant testified that Dr. Kulik did a bone transplant using a donor bone and agreed that her ankle was fused as a part of the surgery. The claimant testified that Dr. Kulik also cut into her heel from the top of her foot and put in two pins in order to hold the bones together. The claimant testified that as a result of this surgery she cannot turn her foot sideways and that she has to make sure that she keeps her foot straight in order that her foot not turn sideways because that would mess things up.

The claimant testified that she has had no injury subsequent to her compensable injury of April 3, 2000.

The claimant testified that Dr. Kulik released her on December 15, 2004. The claimant testified that her surgery by Dr. Kulik did help her at least 50 percent but she still has problems with her RSD and the pins in her foot make her foot stiff. The claimant testified that she still has problems with her RSD. The claimant testified that because of her surgery and the problems which she has with her foot, she has problems walking as well as going up and down stairs. The claimant testified that she is asking the Commission to require the respondents to pay for her related medical expenses for the treatment of her right ankle and foot as well as for the cost of rehabilitation following her surgery. The

claimant testified that some of her bills have been paid by Medicare.

On cross examination, the claimant agreed that her injury on April 5, 2000, was accepted as a workers' compensation injury and benefits were paid. The claimant agreed that she remembered a time when she was seen by Dr. Heim after her compensable injury when he had indicated that there was nothing more he could do for her. The claimant testified that she does not remember Dr. Heim releasing her but she does remember him telling her that sometime in the future she would need to have a fusion of her foot. The claimant testified that after surgery was not recommended she did undergo injections by Dr. Swicegood. The claimant agreed that since she has left the employment of the respondent she has not worked for anyone else and in fact has been drawing social security disability benefits. The claimant agreed that there was a period of time when she did not have consistent medical treatment for her foot because it was her understanding that there was nothing more that could be done and she was going to try to learn to live with it. The claimant testified that it finally got to the point where she no longer could take the discomfort, called her attorney and told him that her foot was killing her and was instructed to make an appointment to see Dr. Heim. The claimant testified that when she saw Dr. Heim in March 2004 he x-rayed her foot and recommended surgery. The claimant testified that when she saw Dr. Kulik on June 2, 2004, he set her up for surgery. The claimant agreed that she has developed arthritis in her foot and that this surgery would

help correct some of her problems. The claimant further agreed that she had outpatient surgery on August 3, 2004, and that after her release by Dr. Kulik on December 15, 2004, she has not been back to Dr. Kulik. The claimant testified that she is trying to exercise on a regular basis but it is difficult.

The medical records set forth that the claimant was seen by Dr. Stephen Heim on August 14, 2002, for a complete evaluation of her lower extremity. The doctor writes that the claimant has a severe calcaneus fracture that resulted in a flattened arch, loss of Bohler's angle and also appears to have developed a complex region pain syndrome formally know as reflex sympathetic dystrophy. Dr. Heim notes that Dr. Swicegood is treating her for her RSD. Upon examination, it is noted that the claimant's right foot is cooler and that her right leg and she has edema. Dr. Heim notes that the claimant has a positive bone scan for osteoporosis and that her skin appears slightly shinny in nature more so than her left leg and foot. Dr. Heim writes that he feels that the claimant has a comminuted calcaneus fracture with an overlaying complex regional pain syndrome. Dr. Heim writes that the claimant walks with a cane and that he gave her a brace that day in hopes of helping with her stability. Dr. Heim assessed the claimant with a 33 percent impairment to the right lower extremity. The claimant was seen by Dr. Heim again on March 25, 2004, noting that she is now 73 years old and has a severe calcaneus fracture from several years ago that resulted in a flattened arch and a loss of Bohler's angle. Dr. Heim notes that she had developed mild reflex

sympathetic dystrophy and was treated by Dr. Swicegood with stellic ganglion blocks. Dr. Heim notes that the claimant says that she continues to have pain and discomfort in her foot and, in his opinion, that is in the subtalar joint. Dr. Heim recommended that the claimant be seen by Dr. Stephen Kulik to see if he needs to perform an subtalar arthrodesis. Dr. Stephen Kulik writes on June 2, 2004, for her subtalar pain noting that it bothers her at night, her pain is severe and that she has swelling. X-rays made at the time show that the claimant has generalized osteopenia, evidence of a calcaneus fracture and subtalar arthritis. Dr. Kulik recommended subtalar arthrodesis which the claimant wished to proceed with. The claimant underwent surgery on her right foot and ankle on August 3, 2004, performed by Dr. Kulik. Dr. Kulik writes on August 18 that he has seen the claimant following her surgery on August 3, 2004, and she is doing well. X-rays taken show good alignment of the claimant's screws, her sutures were taken out and she was placed in a short leg cast with a follow up visit in four weeks. On September 15, 2004, Dr. Kulik writes that the claimant is doing satisfactorily and that she is healing quite nicely. The doctor notes that she has some stiffness in her ankle. The doctor recommended an air cast boot full time for two weeks with removal only for bathing and after that she can remove the air cast to sleep and to exercise. Dr. Kulik recommended that the claimant continue with no weight bearing and he would see her in one month. Dr. Kulik writes on October 13, 2004, that she is doing well and that her medical history is unchanged. Upon physical examination,

the doctor notes that the claimant is non weight bearing on her right lower extremity but that her incision is clean, dry and healing well. Dr. Kulik recommended that the claimant start weight bearing in her boot, progress to a shoe in two more weeks and to begin physical therapy. When Dr. Kulik saw the claimant on November 10, 2004, he notes that the claimant is ambulating well with her crutches and she has no subtalar motion. Dr. Kulik writes that the claimant has some residual swelling and her x-rays show a healed subtalar arthrodesis and excellent alignment. Dr. Kulik recommended that the claimant progress to one crutch or a cane, weight bearing as tolerated, to wear support hose for the ankle edema and to continue physical therapy. On December 15, 2004, Dr. Kulik writes that the claimant ambulates satisfactorily and reports that she has absolutely no pain. The doctor notes that the claimant's ankle range of motion appears to be normal with limited subtalar motion. Dr. Kulik recommended activities as tolerated and to return if need be.

After a complete review of this record, I find that the claimant has proven by a preponderance of the evidence that her continuing need for medical treatment is a continuation of problems resulting from her compensable injury of April 5, 2000. It is not questioned that the claimant had a severe fracture to her right lower extremity that resulted in a flattened arch, loss of Bohler's angle and she also developed RSD. Dr. Heim wrote on August 14, 2002, that he had recorded her measurements for dorsi flexion, plantar flexion, inversion and eversion of the subtalar joint.

The impairment rating which he assessed the claimant with for her right lower extremity included not only her ankle but her subtalar joint and RSD. Dr. Heim saw the claimant on March 25, 2004, for her continued complaints of pain in her foot which he opines is in the subtalar joint. Dr. Heim notes that because of her history of some costalgia, her use of her cane and her pain he wanted her to be evaluated by Dr. Stephen Kulik to see if he needed to perform a subtalar arthrodesis. It seems clear that the continuing problems which this claimant has with her right lower extremity stem from and are a result of her compensable injury of April 5, 2000. Therefore, the respondents should pay for all of the medical treatment for this claimant's right ankle treatment as well as temporary total disability from the date of her surgery on August 3, 2004, through December 15, 2004, when the claimant was last seen by Dr. Kulik. The claimant has requested temporary total disability benefits from June 2 through December 15, 2004, but there is no indication by her treating physician that she was temporarily totally disabled on the June 2004 date. It is noted, however, that she did undergo surgery on August 3, 2004, for her compensable injury and not released by her doctor until December 15, 2004, therefore, she is entitled to temporary total disability for this period of time.

#### FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. Prior opinions are res judicata and the law of the case.

3. The respondents have paid a 23 percent impairment.
4. The claimant sustained a compensable injury to his right ankle.
5. Medical expenses have been paid to date for all injuries.
6. The claimant's healing period ended on December 15, 2004.
7. The claimant is entitled to a weekly compensation rate of \$132.00 for temporary total disability.
8. The claimant has proven by a preponderance of the evidence that her right ankle and foot problems are a result of her compensable injury of April 5, 2000. See discussion above.
9. The respondents should pay for all reasonable and necessary medical treatment for this claimant's right ankle and foot problems.
10. That the claimant has proven by a preponderance of the evidence that she is entitled to additional temporary total disability from August 3, 2004, through December 15, 2004. See discussion above.
11. The respondents have controverted this claimant's entitlement to additional benefits for her right ankle.
12. The respondents should pay the maximum statutory attorney's fee based on the benefits awarded herein. It should be noted that this is an injury which occurred in the year 2000, therefore, an award of attorney's fees should be assessed on medical as well as indemnity.

ORDER

The claimant has proven by a preponderance of the evidence that her ongoing right ankle problems are a result of her compensable injury of April 5, 2000. The respondents, therefore, should pay for all reasonable and necessary medical treatment for this claimant's right ankle and foot.

The respondent should pay temporary total disability to this claimant from August 3, 2004, through December 5, 2004.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

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ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE